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Liberty, Justice, and Equality: An Examination of Past, Present, and Proposed Immigration Policy Reform Legislation

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Liberty, Justice, and Equality: An Examination of Past, Present, and Proposed Immigration Policy Reform Legislation

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Anyone who has looked Hope in the face will never forget it. He will search for it everywhere he goes. And he will dream of finding it again someday, somewhere.¹

I. Introduction

“My family is from El Salvador. We lived in a small apartment. My father worked as a carpenter on the military base, and my mother earned her teaching degree and was waiting to hear from the schools for a job placement,” writes Bessy, a high school senior, on a college application. After crossing two borders when

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† Southeast Regional Counsel for the Mexican American Legal Defense and Educational Fund (MALDEF).

she was four years old, Bessy arrived in New York to be with her uncles. She continues:

My parents have lived in the United States for fifteen years and I for thirteen. We are Americans. I have been going to American schools since kindergarten. This is the only home I know.... I have lived here all my life, just like all my other classmates. My parents have worked hard and paid their taxes, just like all my other classmates' parents. Because I do not have a piece of paper in my possession that says I am a "Resident of the United States," everything is more difficult for me than it is for them. Who says I am not a resident of the United States? I am equally a resident as is everyone else who has that piece of paper.... I have faith in God that he will not let me down. Even if I do not like the road he will lead me towards, I know at the end, there is a reward.

Despite her plea, a stellar grade point average, and an outstanding list of accomplishments and accolades, Bessy was refused admission to her college of choice because of her immigration status. John Hopkins University, a private university, however, admitted Bessy without regard to her immigration status. She is now a sophomore, majoring in cognitive neuroscience.

Some fifteen years after coming to the United States, Bessy was able to regularize her immigration status, and she is now a permanent legal resident. For Bessy, there is a happy ending. For others, the picture is bleak. Approximately 1.6 million children residing in the United States are undocumented. Many bright and ambitious children like Bessy have neither the ability to regularize their immigration status or the opportunity to attend a private university like John Hopkins.

Despite current myths, regularizing immigration status is a non-existent reality for many undocumented children and their immigrant parents. Currently, approximately 9.3 million undocumented persons reside in the United States, representing 26% of the total foreign-born population. Approximately 5.3

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3 Id.

4 Id.
million of these undocumented immigrants are from Mexico.\textsuperscript{5} Two-thirds of the undocumented population resides in six states.\textsuperscript{6} The highest growth regions lie outside of these states, however,\textsuperscript{7} in the Midwest, the Rocky Mountains, and the Southeast.\textsuperscript{8} The Migration Policy Institute estimates that 500,000 undocumented immigrants arrive in the United States each year.\textsuperscript{9}

While anti-immigrant advocates argue that immigrant communities are a drain on community resources, U.S. industries have a specific and consistent need for immigrant labor. Indeed, far from draining resources, immigrant workers pay taxes and help fuel our consumer-based economy.\textsuperscript{10} Studies indicate that approximately 6 million of the 9.3 million undocumented immigrants are working and that virtually all undocumented males are part of the labor force.\textsuperscript{11} However, approximately two-thirds of undocumented workers earn less than two times the minimum wage.\textsuperscript{12}

Politicians, policy makers, and advocates have all accepted, to a certain degree, that we, as a nation, need to examine critically our immigration policies. In order to address the complexities surrounding immigration policy reform, it is crucial that the discussion be comprehensive. Both past and present attempts to reform immigration policy have been narrow in scope. Still, today, no consensus has been reached on what “comprehensive immigration reform” means, whose interests should be considered, and what issues should be addressed.\textsuperscript{13} These questions are critical to developing a comprehensive framework of immigration reform.

\textsuperscript{5} Id.

\textsuperscript{6} California (26%), Texas (12%), Florida (10%), New York (8%), Illinois (4%), and New Jersey (4%). Id.

\textsuperscript{7} Id.

\textsuperscript{8} Id.


\textsuperscript{10} See infra Part II.E.

\textsuperscript{11} Passel et al., supra note 2.

\textsuperscript{12} Id.

\textsuperscript{13} See infra Part IV.
and for identifying potential partners in a broad coalition advocating for the same.

Part II of this Article attempts to broaden the dialogue by defining the current immigration structure and identifying some of the interests, issues, and legal considerations involved that will ultimately lead to the maintenance of the current system or an extensive restructuring of the system. Part III analyzes these identified interests, issues, and legal considerations in relation to the broader historical context of United States immigration policies towards Mexico as well as in the context of two historical reform initiatives. Part IV examines the proposed immigration reform legislation of the 108th Congress and takes a preliminary look at the 109th Congress in relation to the identified interests, issues, and legal considerations. Finally, Part V concludes by making some preliminary recommendations as a starting point for a comprehensive immigration reform strategy.

II. The Current State

We should not be content with laws that punish hardworking people who want only to provide for their families and deny businesses willing workers and invite chaos at our borders.

A. The Current System: The Problem Defined

Current U.S. immigration policy is broken. In the 2005 State of the Union address, President Bush admitted that the current system unfairly punishes immigrant workers and employers alike, while at the same time compromising national security. As a starting point in a comprehensive immigration reform discussion,

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14 As a starting point, this Article will highlight some interests, including the needs of the immigrant laborer and his family, the employer, the U.S.-born or resident co-worker, the small and big business owner, financial institutions, law enforcement agencies, local and state government employees, and the broader community for implementation of immigration policies that preserve our fundamental notions of democracy—fairness, equity, and justice. Part II will also highlight issues, ranging from our current immigration system and enforcement policies and practices, labor, the economy (United States and Mexico), and national security demands post-9/11. Additionally, some legal considerations will be raised on the local, state, national, and international levels.

it is imperative that we critically examine the current system and the immigration enforcement policies and practices in their entirety.

In short, our current system is not supporting present or future economic demands for immigrant labor. It forces employers to seek employment through unlawful and clandestine means; it exploits the millions of undocumented workers who are in need of employment opportunities at the expense of family and well-being; it impacts the wages and rights of the non-immigrant co-worker; it does not address security demands post-9/11; it is impacting and challenging local, state, federal, and international law mandates; and, for everyone directly and indirectly impacted by our current immigration system, it attacks our fundamental notions of democracy—fairness, equity, and justice.\(^6\)

**B. The Current Immigration Structure**

It is nearly impossible for working, undocumented immigrants to regularize their immigration status. This arrangement has forced well-intentioned employers to break federal law by hiring undocumented workers.\(^7\) It has also allowed underhanded employers to traffic, recruit, and hire undocumented workers for the purpose of exploiting them.\(^8\)

An employer or family member must serve as a sponsor to regularize the immigration status of an undocumented worker.\(^9\) Not every occupation yields an equal opportunity for a visa, however,\(^10\) and not every family member has the ability to sponsor other family members.\(^11\) For example, for hardworking undocumented workers in a low-wage job, their only means of

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\(^6\) See infra Part V.

\(^7\) MALDEF, Atlanta Office has received a number of anonymous telephone intakes where employers request assistance for their undocumented employees. Specifically, they express their desire not to break existing federal laws by employing undocumented workers. Further, they are seeking assistance for their workers in regularizing their immigration status.


\(^9\) IRA J. KURZBAN, IMMIGRATION LAW SOURCEBOOK (9th ed. 2004).

\(^10\) See id. ch. 7.

\(^11\) See id. chs. 5, 6.
obtaining employer sponsorship for the purpose of obtaining a visa is through the "other worker" category. The "other worker" category only provides approximately 5,000 visas worldwide each year. Based on this figure, it would take 1,200 years to regularize the immigration status of the 6 million undocumented workers currently residing in the United States.

For those who do have the ability to regularize their immigration status, backlogs have resulted in lengthy waiting periods. Although the federal government has pledged to decrease the number of backlogs through a Backlog Elimination Plan, as of June 30, 2004, the backlog still affected 3.2 million applicants. Even this estimate is more conservative than previous estimates that defined backlog by completion as opposed to the new definition, which bases the figure on receipts. At present, the backlogs for unification of spouses with children from Mexico are over ten years.

C. Current Immigration Enforcement Policies

I. At the Border

Despite existing barriers to regularizing immigration status once in the United States, immigrants continue to cross the border or over-stay visas, potentially placing themselves in life threatening and exploitive situations in hope of reuniting with family and/or escaping the conditions of their home country for employment opportunities in the United States. In fact, despite

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22 See id. chs. 2, 3.
23 Id.
24 This, of course, assumes that all of the estimated 6 million undocumented workers are working in low wage jobs without other means of regularizing their immigration status. This also assumes that all 5,000 "other worker" category visas would go to the same 6 million workers.
26 U.S. CITIZENSHIP & IMMIGRATION SERVICES, BACKLOG ELIMINATION PLAN UPDATE (June 16, 2004), at http://uscis.gov/graphics/aboutus/repsstudies/BEPFinal-signed.pdf. Additionally, the backlog estimates do not include asylum applications, as they are considered still pending. Id.
recent attempts to tighten the border by increasing the number of border agents and constructing physical barriers, immigration has not been deterred. Rather, it has increased.\textsuperscript{28} In addition, border policies have left some undocumented workers trapped inside the United States. Tighter borders have resulted in a change in migration patterns of undocumented workers from a decade earlier, resulting in essentially permanent stays in the United States.\textsuperscript{29} The change in policy was a marked divergence from earlier policies that recognized that many workers preferred to return to their homeland if given the opportunity.

An estimated 400 immigrants died crossing the United States–Mexico border in 2003.\textsuperscript{30} Since the United States increased resources to secure the border in 1994, an estimated 2,600 people have died while trying to cross the border.\textsuperscript{31} Most startling, an increasing number of children are crossing the border unaccompanied. While in the last two years the estimated percentage of crossings made by children was 3.7\% and 3.9\% respectively, this year that estimate has increased to approximately 5\% of all border crossings.\textsuperscript{32} The children mainly cross from Guatemala, Honduras, El Salvador, and Nicaragua, requiring multiple "illegal" border crossings and exposing the children to violent gangs and immigrant smugglers.\textsuperscript{33} The main reason the

\textsuperscript{28} For example, the number of Mexican workers in the United States has doubled in the past decade. \textit{See Mexican Immigrants and the U.S. Economy: An Increasingly Vital Role, IMMIGRATION POLICY FOCUS} (Sept. 2002), at http://www.aiif.org/ipe/ipcf0902.pdf (last visited Mar. 9, 2005).

\textsuperscript{29} Dr. Demetrios G. Papademetriou, President of the Migration Policy Institute, Address before the Senate Foreign Relations Committee (Mar. 23, 2004), at http://foreign.senate.gov/testimony/2004/PapademetriouTestimony040323.pdf (last visited Mar. 9, 2005).


\textsuperscript{33} \textit{Id.}
children give for embarking on such a life-threatening and life-altering experience is to be reunited with family members already residing in the United States. Current immigration policy has also given rise to ruthless smugglers who force women and children into prostitution and who hold men and women in involuntary servitude in labor camps. Border policies have also created an environment that has perpetuated vigilantism at the border, whereby individuals have taken it upon themselves to detain, harm, and even kill individuals suspected of crossing the border without permission.

2. The Interior

If immigrants, like Bessy, manage to cross the border successfully, they are then often faced with exploitative and sometimes life threatening situations while within the United States. This condition is the result of a combination of the person's immigration status coupled with the overreaching and the over-inclusive messaging, policies, and practices that have reared in the wake of September 11, 2001. At the hand of the employer, the businessman, the landlord, the neighbor, the politician, and even the police officer, undocumented immigrants are subjected to exploitation at work and deplorable living conditions at home.

34 Id.
36 Id. at 5; see also Christina Leonard & Elvia Diaz, Growing Numbers Easy Prey in Phoenix, ARIZ. REPUBLIC, July 8, 2001, available at http://www.freerepublic.com/forum/a3b4873943253.htm (last visited Mar. 9, 2005). “Thousands of undocumented immigrants are getting caught in the violence as smugglers kidnap each other’s clients and terrorize them. In the past five months, authorities discovered more than 2,000 immigrants huddled inside 116 houses in Phoenix, where many had been held hostage.”
37 MALDEF, Southern Poverty Law Center, and Ricardo Deanda filed a lawsuit, Leiva v. Ranch Rescue, in Texas challenging the brutal beating by vigilantes of immigrants who were crossing the border. The case was settled shortly after the lawsuit was filed. See Southern Poverty Law Center, Case Docket: Leiva v. Ranch Rescue (2005), at http://www.splcenter.orgfiegal/docket/files.jsp?cdrID=44.
39 Landlords' Free Rein Fails Inspection, ATLANTA J. & CONST., Jan. 1, 2005, at
They are the victims of both violent crimes and property crimes committed by others living in their communities,\textsuperscript{40} the target of resolutions and legislation that serve to exclude immigrants from basic services,\textsuperscript{41} and the victims of racial profiling and property crimes at the hands of police officers.\textsuperscript{42} This harsh environment is further exacerbated by citizen groups working alongside local and state governments to focus resolutions and legislation on anti-immigrant measures and initiatives, such as the national initiative Protect America Now (PAN).\textsuperscript{43} These initiatives shift the focus from the current situation and, instead, divert attention to issues that have arisen based on differences and fear.

While federal law prohibits employers from hiring undocumented workers, there are no laws that make it unlawful for an undocumented worker to seek or obtain employment. The federal government, nevertheless, has chosen an interior policy largely focused on undocumented workers. For example, beginning in 1999, interior enforcement policies have amounted to targeted and systematic employment raids where the employees are taken into custody and deported. Little to nothing is done to the employer.\textsuperscript{44} Operation Tarmac is one such policy, dedicated to


\textsuperscript{41} See infra note 43.


\textsuperscript{44} A "comprehensive interior enforcement strategy" was adopted by the INS in 1999 which called for quick response teams, exchange of information between local
targeting the airport worker. Through the operation, twenty-four airports throughout the country were raided, resulting in arrests, detentions, summary suspensions, and expulsions of hundreds of immigrant airport workers. Other policies include raids on large employer companies such as Wal-Mart. In 2003, United States officials raided sixty-one Wal-Mart stores, resulting in the arrests of 250 employees suspected of being undocumented. In 2004, an estimated 157,000 undocumented immigrants were returned to their home countries, a record number of deportations.

It is reported that similar border and interior enforcement policies will not only continue but that the amount of money towards these practices will also increase. On January 25, 2005, prior to the official release of the President’s budget, it was reported that the Bush administration plans to increase spending on “cracking down” on undocumented workers by arresting and deporting them. While recent U.S. policies in the interior have largely focused on worker raids, President Bush plans to increase spending on work site investigations, including providing money to conduct audits on employers. It is believed, however, that President Bush will increase funding for more Border Patrol agents. A law passed in 2004 would allow 2,000 new agents to be hired every year for the next five years. Such an increase


49 Id.

50 Id.

51 Id.

52 Section 5202 of the Intelligence Reform and Terrorism Prevention Act of 2004 (P.L. 108-458).
would double the number of agents at the border, the largest increase in the nation’s history.\textsuperscript{53}

\textbf{D. Our Current System’s Relation to Labor}

In the United States, current and future demand for an immigrant labor force is high. Between 1990 and 2000, nearly one-half of the growth in the United States civilian labor force was attributed to recently arrived immigrants.\textsuperscript{54} Without the influx of immigrant labor, the twenty-five to thirty-four year old work force would have declined by 7.4 million, or 21\%.\textsuperscript{55} A study conducted by Northeastern University concluded that “at no time in the past ninety years was the nation so dependent on immigrant labor to meet its growing need for labor, especially among male workers, whose native supply barely increased in the past decade and actually declined in number of regions and states, especially in the Northeast.”\textsuperscript{56} Predictions indicate that the labor force will continue to age with the fifty-five year and older group projected to be four times the rate of growth of the overall labor force.\textsuperscript{57} Because of this aging phenomenon in the United States, the dependence on new immigrant labor is predicted to increase in the future.\textsuperscript{58} This arrangement has forced employers to seek undocumented workers.

For underhanded employers and smugglers, the imbalance in labor supply and demand has created an opportunity to exploit a large undocumented population. In 2004, the federal government estimated that between 14,500 and 17,500 people were trafficked into the United States.\textsuperscript{59} These individuals were victims of

\textsuperscript{53} Gamboa, supra note 48.

\textsuperscript{54} CENTER FOR LABOR MARKET STUDIES, NORTHEASTERN UNIVERSITY, IMMIGRANT WORKERS AND THE GREAT AMERICAN JOB MACHINE: THE CONTRIBUTIONS OF NEW FOREIGN IMMIGRATION TO NATIONAL AND REGIONAL LABOR FORCE GROWTH IN THE 1990s 27 (2002).

\textsuperscript{55} \textit{Id.} at 28.

\textsuperscript{56} \textit{Id.} at 41.


\textsuperscript{58} See, e.g., U.S. DEP’T. OF STATE, FEDERAL RESERVE BOARD CHAIRMAN ALAN GREENSPAN’S SEMIANNUAL MONETARY REPORT TO CONGRESS IN INTERNATIONAL INFORMATION PROGRAMS 9 (Feb. 11, 2003).

\textsuperscript{59} U.S. DEP’T OF STATE, TRAFFICKING IN PERSONS REPORT 23 (2004), \textit{at}
commercial sexual exploitation in prostitution and labor exploitation in "sweatshops, domestic servitude, construction sites and agricultural settings." Further, a recent report issued by Human Rights Watch indicated that meatpacking workers, who are primarily undocumented immigrants, "contend with conditions, vulnerabilities, and abuses which violate human rights."

This phenomenon has been exacerbated by the recent U.S. Supreme Court decision, *Hoffman Plastics*, where the Court held that undocumented workers are not entitled to back pay not worked under the National Labor Relations Act (NLRA), even though they were fired illegally for engaging in protected labor organizing activities. The *Hoffman* decision has resulted in a number of employers attempting to circumvent and challenge existing protections for undocumented workers in a number of areas outside of the NLRA, including workers' compensation law, rights under the Occupational Safety & Health Act (OSHA), and Title VII. In addition, as noted in the Human Rights Watch


60 Id.


63 Recent workers' compensation cases include: Safeharbor Employer Services, Inc. v. Velazquez, 860 So.2d 984, 986 (Fla. Dist. Ct. App. 2003) (noting that Hoffman does not change an undocumented workers' ability to receive workers' compensation for already performed work under Florida workers' compensation statutes); Correa v. Waymouth Farms, Inc., 664 N.W. 2d 324 (Minn. 2003) (finding that undocumented workers may receive temporary total disability benefits after conducting a diligent job search; the Immigration and Reform Act of 1986 (IRCA) does not prohibit undocumented workers from conducting the search, as long as no document fraud is committed); Cherokee Ind., Inc. v. Alvarez, 84 P.3d 798 (Okla. 2003) (finding that undocumented worker is covered under the Workers' Compensation Act and may receive benefits that are not precluded by Hoffman); Silva v. Martin Lumber Co., 2003 WL 22496233 (Tenn. Workers Comp. Panel 2003) (holding that undocumented workers may receive partial permanent disability benefits, even if they present unauthorized documents because no causal connection exists between the injury and the document fraud). For a case involving claims under Title VII, see Rivera v. Nibco, Inc., 384 F.3d 822 (9th Cir. 2004) (noting that the policy goals behind Title VII, as opposed to the NLRA, likely outweigh any bars against receipt of back pay by undocumented immigrants). For OSHA violations in the meatpacking industry, see generally Human Rights Watch, *supra* note 61.
report, immigrant workers in the meatpacking industry are not only victims of failed federal laws and policies. They are also harmed by the failure of the United States to meet its obligations under international human rights standards. In addition, U.S. born or resident co-workers are harmed by the conditions set for the undocumented workers.

E. Positive Economic Contributions of Immigrants

The influx of immigrants has had a positive impact on the U.S. economy as a whole as well as the economies of many states. Undocumented Mexican immigrants alone contribute $220 billion annually to the gross domestic product. In addition, financial institutions have found it economically beneficial to open up their services to undocumented immigrants. This desire to integrate undocumented immigrants into our economy has resulted in the approval of alternative forms of identification by the U.S. Treasury Department, approval under the U.S.A. PATRIOT Act, and by municipalities throughout the country. Also, states such as Minnesota, Illinois, and Nevada have conducted studies on the

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64 Human Rights Watch, supra note 61.

65 Id. The co-workers of immigrant workers are similarly subjected to the conditions of the immigrants in meatpacking factories. Id.


economic benefits of undocumented immigrants, including those contributions to the job market and to consumer expenditures.\(^{68}\)

Immigration has also had a positive impact on the Mexican economy. Specifically, through remittances in 2004 alone, Mexican nationals living and working in the United States sent $16.6 billion back home.\(^{69}\) For Mexico, this has meant that, for the second year in a row, remittances have exceeded direct foreign investment.\(^{70}\)

In addition, contrary to popular myth, another reason why the economic contribution of immigrants is high is because immigrants give more through taxes than they are able to receive back in services, benefits, or privileges.\(^{71}\) Often, they are precluded from receiving the basic services, benefits, and privileges for which their labor and taxes have paid.\(^{72}\) We must recognize that the same individuals who are receiving direct immediate economic benefits at the expense of others' lives and well-being are actually suffering long-term by this inhumane arrangement. The long-term economic benefits to co-workers and the broader community as a whole cannot be underestimated. In fact, some states have explored the long-term economic benefits to integrating fully the immigrants that currently reside in the United States.


\(^{70}\) Id.

\(^{71}\) See, e.g., M. Fix & J. Passel, Immigration and Immigrants: Setting the Record Straight, URBAN INST., 1994, at 6. “Overall, annual taxes paid by immigrants to all levels of government more than offset the costs of services received, generating a net annual surplus of $25 billion to $30 billion.” Id.

III. A Historical Perspective

The cause of liberty becomes a mockery if the price to be paid is the wholesale destruction of those who are to enjoy liberty.\textsuperscript{73}

This Part begins with a broad examination of past United States immigration policies towards Mexico. Within this examination, two historically relevant programs—the Bracero Program and the Immigration and Reform Act of 1986 ("IRCA")—will be discussed.

The first immigration restrictions by the United States began in 1875 and continued through 1917.\textsuperscript{74} Mexican nationals were not included in exclusion discussions until the 1920s.\textsuperscript{75} Prior to this time, Mexican nationals were allowed to cross the border without restriction largely due to the reliance of the United States on Mexico for labor.

From 1917 through 1951, the United States instituted its first national origins quota systems.\textsuperscript{76} In 1917, the United States instituted its first literacy test requirement for immigrants.\textsuperscript{77} Mexicans were excluded, however, because of Western growers' heavy reliance on their labor.\textsuperscript{78} In 1924, the United States permanently adopted a racially motivated "national origins" system that dictated immigration policy until 1951.\textsuperscript{79} The Act set national origin quotas based on the percentages of those already present in the United States, preserving a predominantly White European population.\textsuperscript{80}

With the passage of the 1921 and 1924 Immigration Acts, the debate to exclude Mexicans began. Although Mexican nationals

\textsuperscript{73} GANDHI ON NON-VIOLENCE: A SELECTION FROM THE WRITINGS OF MAHATMA GANDHI 54, I-272 (Thomas Merton ed., 1965).

\textsuperscript{74} See generally KURZBAN, supra note 19 (illustrating a brief history of United States immigration laws).

\textsuperscript{75} See RODOLFO F. ACUÑA, ANYTHING BUT MEXICAN: CHICANOS IN TEMPORARY AMERICA 111 (1996) (describing the debate as to whether Mexicans should be assigned a quota).

\textsuperscript{76} See KURZBAN, supra note 19, at 2 (listing various requirements established under the first quota systems).

\textsuperscript{77} See id.

\textsuperscript{78} ACUÑA, supra note 75, at 110.

\textsuperscript{79} KURZBAN, supra note 19, at 2.

\textsuperscript{80} ACUÑA, supra note 75, at 111.
were not excluded systematically until some time later, the debates for the passage on the 1924 legislation sparked racist arguments by restrictionists and anti-restrictionists alike. The restrictionists wanted to limit immigration from Mexico to keep the races from mixing. For example, Representative Martin B. Madden (R-IL), chairman of the House Appropriations Committee, stated, "The bill opens the doors for perhaps the worst element that comes into the United States—the Mexican peon.... [It] opens the door wide and unrestricted to the most undesirable people who came under the flag." The anti-restrictionists wanted Mexicans to continue to be allowed to move freely across the border in order to maximize their utility as laborers while not allowing them to completely integrate into the United States. Representative John N. Garner of Texas (D-TX) emphasized that the Mexican workers returned home after the picking season, stating:

All they want is a month's labor in the United States, and that is enough to support them in Mexico for six months... they do not cause any trouble, unless they stay for a long time and become Americanized.... They can be imposed on; the sheriff can go out and make them do anything.

Anti-Mexican sentiment continued into the Depression during which Mexicans were targeted as scapegoats for the poor economic conditions. Between 1931 and 1934, for example, 500,000 to 600,000 Mexican Americans were "repatriated." The majority of those summarily arrested, detained, and deported were born in the United States. The wartime need for labor, however, proved too great. As a result, instead of re-opening the borders, the United States entered in the Bracero Program—a temporary labor program that lasted from 1943 to 1964—with the Mexican government. The Bracero Program was marked with civil and human rights abuses. Because of the historical perspective of

82 Id. at 214.
83 ACUÑA, supra note 75, at 112.
84 Id.
85 Id.
86 Id.; see also OCCUPIED AMERICA, supra note 81, at 286-88.
87 Braceros living conditions were substandard, wages were inadequate, and
this temporary worker program, many (including MALDEF) remain opposed to another temporary worker program to address the current immigration system crisis.

In the 1950s, the U.S. Attorney General Herbert Brownell added to the anti-Mexican climate. He was quoted as stating that he wanted to shoot “wetbacks” crossing into the United States, but farmers protested because they feared the loss of cheap labor.\footnote{ACUÑA, supra note 75, at 113.} Congress passed the McCarran-Walter Act in 1952, which remained the immigration policy of the United States until 1964.\footnote{KURZBAN, supra note 19, at 3.} This Act established the framework for the current system. Among other things, it allowed for the first time special immigration status to those with certain job skills and levels of education.\footnote{Id.; see also ACUÑA, supra note 75, at 113.} It also allowed the U.S. to deport “undesirable aliens” and naturalized citizens.\footnote{KURZBAN, supra note 19, at 3; see also ACUÑA, supra note 75, at 113.} It is reported, for example, that the law was used to deport Mexican immigrants who were actively engaged in labor organizing.\footnote{ACUÑA, supra note 75, at 113.}

In the 1960s, Congress passed the Immigration Act of 1965.\footnote{Id.} While the Act abolished racial and national origin quotas, it also capped immigration for any one country, established hemisphere quotas, and gave priority status to those with occupational skills and family already present in the United States.\footnote{Id.}

The 1970s saw a new wave of anti-immigrant sentiment that resulted in the INS apprehending approximately 870,000 undocumented workers, 90% of whom were Mexican.\footnote{ACUÑA, supra note 75, at 114.} In 1976, President Ford himself blamed immigrants for the plight of the economy.\footnote{Id. at 115.} In 1978, former CIA director William Colby identified Mexican immigrants as posing a greater threat to the working conditions were unsafe. See Maria Elena Bickerton, \textit{Prospects for a Bilateral Immigration Agreement with Mexico: Lessons from the Bracero Program}, 79 \textit{Tex. L. Rev.} 895, 909 (2001).
United States than the Soviet Union.97

The anti-Mexican sentiment that re-emerged in the 1970s continued into the 1980s, resulting in the introduction of the first "English Only" legislation in California.98 Politicians began to identify immigration as an issue of public safety, linking immigration to drug trafficking and terrorism.99

In 1986, Congress passed the Immigration Reform and Control Act.100 The Act was a compromise, at once both allowing employer sanctions and providing amnesty to those who could prove continuous residence since January, 1982. Two million people received amnesty under the act, 800,000 of them lived in Los Angeles County, and approximately ninety percent were Mexican or Central American.101 One of the criticisms of the Act was that it allowed for employer sanctions which many, including MALDEF, believed would penalize employees rather than employers. This prediction proved true with reports from the California Fair Employment and Housing Commission, showing that INS enforcement under IRCA was encouraging employers to decline anyone who looked "brown."102 Another criticism was that the Act excluded many residing in the United States who did not meet the amnesty requirements. For example, many Salvadorans and Guatemalans who arrived after 1982 were excluded.103 In addition, the money that was to go to amnesty immigrants in health and education programs was cut by the federal government, leaving states to pick up the bill.104 This fueled already existing anti-immigrant sentiment.105

As a result of the IRCA, California saw another wave of anti-immigrant sentiment which manifested with the introduction of more exclusionary legislation, including denial of services to

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97 Id.
98 Id.
99 Id. at 115-116.
100 KURZBAN, supra note 19 at 3.
101 ACUÑA, supra note 75, at 121.
102 Id. at 122.
103 Id. at 118.
104 Id.
105 Id.
undocumented persons and denial of in-state tuition to undocumented students. These exclusionary measures led the way for the passage of Proposition 187, a measure designed to exclude numerous state services and benefits to undocumented persons residing in California. Proposition 187 was eventually invalidated, with the assistance of MALDEF, through court challenge.

Now, with the exponential growth of Latinos from 1990 to the present in the Midwest, Rocky Mountains, and the Southeast, we are again re-visiting immigration policies and enduring yet another wave of anti-immigrant sentiment.

IV. Proposed Legislation

The great tasks of magnanimous men:—to establish with truth, justice, charity and liberty, new methods of relationships in human society.... It is an imperative of duty; it is a requirement of love.

A number of immigration reform bills were proposed in the 108th Congress. There were two basic types: temporary guest worker bills and population specific bills, such as the Dream Act, which addresses immigrant students, and the Ag Jobs Bill which addresses agricultural workers. At the writing of this Article, it is too early to determine which legislation will be reintroduced in the

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106 Id. at 124-27.
107 Id.
109th Congress. However, it is believed that, in addition to the Ag Jobs bill that was reintroduced on February 10, 2005, there will be at least two more pieces of legislation reintroduced: a White House proposed guest worker bill and the former Dream Act reintroduced as the American Dream Act. Although the GOP leadership announcement of their top ten priorities for the 109th Congress on January 24, 2005 did not include immigration policy reform, the Bush Administration is expected to reduce to writing the President’s immigration reform proposal, announced in 2004 and mentioned in his 2005 State of the Union address.

For the most part, the current legislation does not take into account all of the identified interests, issues, and consideration. As such, it has not proposed comprehensive solutions. For example, guest worker bills mainly address employer and U.S. economic concerns. They fail to address the employee and the employee’s family needs, such as family reunification and realization of full labor rights. They do not address the needs of the U.S. born or resident co-worker. In addition, abuses in agricultural guest worker programs have been documented. Specifically, the Bracero Program is one historical example of how a guest worker program promoted civil and human rights abuses. Further, the guest worker bills are economically short-sighted, failing to account for complete economic contribution of the immigrant. In addition, the White House proposal will not take into account the current situation of working immigrants. For example, those who have been long working in the United States

111 See, e.g., Ferrell Foster, Congress Expected to Address Immigration Issues, BAPTIST STANDARD, Jan. 21, 2005. In addition, immediately preceding the final editing stages of this paper, the Secure America and Orderly Immigration Act of 2005, S. 1033, 109th Cong., 1st Sess. (2005), was introduced by Senator Edward Kennedy (D-MA) and Senator John McCain (R-AZ). It is a bipartisan comprehensive approach to immigration reform that is supported by MALDEF.


115 See generally Bickerton, supra note 87.
are not likely to join a program that will only give them three years (with the possibility of three additional years) in the United States. It will not allow them to care for their families or allow them to live and work permanently in the United States.

While the population specific bills may be appropriate interim steps, they do not address all immigrants currently residing in the United States and, thus, fail to bring us to a comprehensive solution.

V. Conclusion

You shall also love the stranger, for you were strangers in the land of Egypt. ¹¹⁶

With this historical perspective and the identified interests, issues, and considerations in mind, I make the following preliminary recommendations as a starting point for a framework on comprehensive immigration reform. Comprehensive reform should, at a minimum, address two main areas: (1) the current immigration system and immigration enforcement policies and practices at the border and the interior and (2) current and future immigration status of all working immigrants and their families.

A. Addressing the Current System and the Immigration Enforcement Policies and Practices

In 1965, the United States essentially abolished all racial and national origins quotas. In the process of trying to make our policies more “equal,” however, our policies restricted who and how many were allowed to enter and stay from Mexico. Given the unique history between the United States and Mexico, it is imperative that we reconsider our general policies. Creating a broad “legalization” plan, in itself, will not address the issues that arise between the United States and Mexico every ten or twenty years. It is time we took a critical look at who and how many are allowed to enter and stay. Given our history, not all is equal when it comes to Mexico. As such, U.S. immigration policies should appropriately reflect equality based on the differences between Mexico as compared to other countries and our relationships with them.

¹¹⁶ Deuteronomy 10:19. This biblical passage was cited in Voice and Choices: A Pastoral Letter from the Catholic Bishops of the South, Nov. 15, 2000.
In addition, in order for the "legalization" plan to be successful, it is imperative that immigration enforcement policies and practices be considered simultaneously. The immigration enforcement strategies will determine whether or not the "legalization" plan is effective in deterring future migration. As such, the plan must examine strategies that best address interior and border policies where current and past policies and practices may have failed or fallen short. It is imperative that we develop strategies that move beyond tighter borders, workplace raids, and mass deportations. These strategies have not deterred immigration but have, instead, contributed to our current exploitative system.

B. Addressing the Immigration Status of Working Immigrants and Their Families—Current and Future

Based on an assessment of the issues facing current immigration policy, an assessment of historical reference points, and placed in a broader context of comprehensive reform that meshes with the identified interests, issues, and legal considerations, a preliminary list can be started of what must be included in a "legalization" package. Any plan must include, or at least consider, all of the working undocumented immigrants currently residing in the United States and take into account the worker and their families. The plan should also include a path towards permanent legal residency if the person so chooses and allow for family unification while their status is pending. And, until the person becomes a permanent legal resident, the working immigrant should have full labor rights and protections as recognized by local, state, federal, and international laws. This will protect the immigrant worker and the United States born or resident co-worker. A comprehensive approach will simultaneously address national security concerns. Common sense dictates that integrating 9.3 million undocumented, unknown immigrants into our society will address any existing national security concerns regarding their presence. Introducing or passing legislation that seeks to limit their access to services, benefits, or privileges does nothing in regards to knowing who they are or integrating them into our society.

In the event that a plan does not include all immigrants currently residing in the United States, it is imperative that the plan address the immigration needs of those excluded.
Additionally, the plan should consider future immigration needs. Currently and historically, there have been provisions that address the future immigration needs and migratory patterns of immigrants and their families. We must ensure that examples of these provisions continue to exist, are reinitiated, expanded, and/or permanently extended.\(^\text{117}\) In addition, it is imperative that we continually think of additional ways to ensure that these demands are being met to maximize the broader "legalization" effort.

\textbf{C. Concluding Remarks}

It is imperative that we take the time to resolve this issue of great importance that impacts every single person in our country. Denying ourselves a comprehensive resolution on this matter denies us the ability to fully realize the fundamental notions of democracy that not only makes our nation great but also defines who we are and who we strive to be. These fundamental notions of fairness, equity, and justice are the very bedrock of this great nation. Many United States citizens and residents are benefiting from the "illegal" nature of the undocumented individual’s immigration status. For example, the employer, businessman, the landlord, the neighbor, politicians, and even the police officer all act for their own short-term economic benefit, preying on the exploitable situation of the undocumented immigrant.

In broader terms, it is not fair for someone like Bessy to attend U.S. schools since kindergarten, grow up in the United States knowing no other home, earn exemplary grades, to then be turned away from the American dream. This tears at the very fundamental notion upon which our society thrives, the notion of

\(^{117}\text{Section 245(i) is one small example of assisting immigrants in the reunification of their families pending final decision making. For people entering the United States without authorization, this section allowed individuals to stay in the United States pending the change in their immigration status. 8 U.S.C. § 1255(i) (1994). MALDEF is in favor of permanently extending Section 245(i). The V visa is another example of measures to assist immigrants in reunification with family members. This relief, however, only existed for a short period of time. It applies to the spouses and minor children of resident aliens who petitioned on or before December 21, 2000. Similar status should be considered as viable future options. In addition, existing programs such as Temporary Protective Status (TPS) and Nicaraguan and Central American Relief Act (NACARA) have been helpful programs for individuals seeking relief from the situations that exist in their countries. The programs should be considered for extension to other similarly situated immigrants from other countries.}\)
meritocracy and fairness, that if you work hard you should be afforded equal access and opportunity—values espoused in the American’s Creed.\footnote{118}

Similarly, it is not equitable for our hardworking, taxpaying immigrants working in the most dangerous jobs to be denied a fair wage or denied benefits when maimed, or their dependents to be denied full benefits when they die on the job.\footnote{119} This violates notions of equity espoused in the Declaration of Independence,\footnote{120} the Fourteenth Amendment of the United States Constitution,\footnote{121} the Gettysburg Address,\footnote{122} and the American’s Creed.\footnote{123} It also violates the notion of taxation without representation assured in the U.S. Constitution\footnote{124} and the Declaration of Independence.\footnote{125}

It is not just for employers to intentionally hire and recruit undocumented immigrants for the purpose of paying less workers’ compensation benefits, paying lower wages, requiring workers to work long hours without overtime wages, breaks, appropriate protective gear or training, and then dispose of the workers at whim. Justice for these workers is protected in our state laws, federal laws, the United States Constitution, the Pledge of the Allegiance, and the American’s Creed.

It is certainly inhumane for us to tolerate men, women, and children who are taken into and maintained in any kind of modern

\footnote{118} Adopted by the House in 1918, the American’s Creed is available at http://www.usconstitution.net/creed.html ("I believe in the United States of America as a government of the people ... established upon the principles of freedom, equality, justice, and humanity ... ").

\footnote{119} Bureau of Labor Statistics reveal that foreign born workers in the U.S. increased by 22% from 1996 to 2000, but the fatal occupational injuries for immigrants increased by 43%, while fatal injuries in US workers decreased by 5%. Katharine Loh and Scott Richardson, Foreign-born workers; trends in occupational injuries, 1996-2001, 127 MONTHLY LAB. REV. 42, 42 (2004). Texas immigrant workers have an especially disproportionate high risk of death on the job. From 1996 to 2001, immigrants represented 17% of the working population, but 21% of the work related deaths. \textit{Id.}

\footnote{120} \textbf{THE DECLARATION OF INDEPENDENCE}.

\footnote{121} U.S. CONST. amend. XIV.


\footnote{123} The American’s Creed, \textit{supra} note 118.

\footnote{124} U.S. CONST.

\footnote{125} \textbf{THE DECLARATION OF INDEPENDENCE}, para. 19 (U.S. 1776).
day slavery or involuntary servitude whether it is for labor or prostitution simply because we have made them vulnerable by the very nature of the label "illegal." These rights are guaranteed in the Thirteenth Amendment of the United States Constitution.\textsuperscript{126}

Perhaps the poignant words of the Declaration of Independence best sums up the right of all immigrants to be free from this ultimate exploitation, recognizing a law bigger than us—recognizing each individual's humanity: "We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of Happiness."\textsuperscript{127}

\textsuperscript{126} U.S. Const. amend. XII, § 1.

\textsuperscript{127} The Declaration of Independence, para. 2 (emphasis added).